

In the Matter of Merchant Mariner's Document No. Z-85575 and all other Documents

Issued to: VERNON L. FRANK

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

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VERNON L. FRANK

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 6 April 1956, an Examiner of the United States Coast Guard at Philadelphia, Pennsylvania, revoked Merchant Mariner's Document No. Z-85575 issued to Vernon L. Frank upon finding his guilty of misconduct based upon five specifications. It is alleged that while serving as an able seaman on board the American SS SEACLIFF under authority of the document above described, on or about 13 January 1956, while said vessel was in the port of Galveston, Texas, he wrongfully failed to perform his assigned duties due to intoxication (First Specification). The other specifications refer to times when the SEACLIFF was at Santos, Brazil. It is alleged that on or about 10 February 1956, Appellant assaulted a fellow crew member, Albert Fontes, by brandishing a knife in a threatening manner and offering to do bodily harm (Second Specification); on or about 14 February 1956, Appellant wrongfully was absent from his ship and duties for 45 minutes (Third Specification); on or about 14 February 1956, Appellant wrongfully endangered the ship and damaged ship's property by burning a mattress (Fifth Specification); Appellant wrongfully refused to carry out a lawful order of the Boatswain to paint an assigned are (Sixth Specification). The Forth Specification was dismissed by the Examiner due to lack of sufficient evidence.

Appellant did not appear for the scheduled hearing on 4 or 5 April 1956. On the latter date, the oral deposition of two witnesses were taken before the Examiner at the request of the Investigating Officer. The hearing was then adjourned until 6 April. Since Appellant was not heard from during the interim, the hearing was resumed on 6 April. The Examiner entered a plea of "not guilty" to the charge and each specification on behalf of Appellant and conducted the hearing in absentia in accordance with the pertinent regulations. The Investigating Officer had informed Appellant that the hearing would proceed in his absence if he

failed to appear.

The Investigating Officer made his opening statement. He then introduced in evidence the two oral depositions taken on 5 April and certified copies of entries in the Official Logbook of the SEACLIFF as well as a certified copy of extracts from the vessel's Shipping Articles for the voyage in question.

At the conclusion of the hearing, the Examiner announced his decision and concluded that the charge and five specifications had been proved. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-85575 and all other documents issued to Appellant by the United States Coast Guard or its predecessor authority.

Based upon my examination of the record submitted, I hereby make the following

#### FINDINGS OF FACT

Between 12 January 1956 and 24 March 1956, Appellant was serving as an able seaman on board the American SS SEACLIFF and acting under authority of his Merchant Mariner's Document No. Z-85575.

Upon the ship's departure from Galveston, Texas, on 13 January 1956, Appellant was in an intoxicated condition and he failed to perform his duties on his 1600 to 2000 watch. Appellant appeared on deck with a suitcase and attempted to leave the ship after getting underway at 1647.

The ship was at Santos, Brazil from 10 February through 16 February 1956. At 1100 on the former date, Appellant engaged in a heated argument with the Chief Cook, Second Cook and messman Albert Fontes. Appellant was making derogatory remarks about the baking on the ship. During the course of the argument, Appellant took out a pocket knife with a four-inch blade and threatened to stab Fontes. No one attempted to harm Appellant. The Third Cook approached and told Appellant to put the knife away. Appellant did so after verbally abusing the Third Cook.

On 14 February 1956, Appellant was absent without leave from the ship and his duties between 0910 and 0935 and again between 1015 and 1035. On the evening of the same day, Appellant damaged one of the ship's mattresses by burning it. Appellant was asleep in his own bunk, on the other side of the room from the burning mattress, when other members of the crew discovered the fire and extinguished it after the Chief Mate unlocked the door with a master key. Appellant could not be awakened at the time.

On 16 February 1956, Appellant was assigned by the Boatswain to paint the ship from a raft alongside the ship. After doing this work for approximately an hour, Appellant refused to continue painting. Appellant stated that he was not going to work under unsafe conditions - working alongside when he thought there was a 3 1/2 knot current. The Boatswain told Appellant to see the Chief Mate about it, but Appellant went to his room instead.

Appellant's prior record is as follows. His Third Mate's license was revoked in 1947 for striking, beating and wounding a crew member. Appellant was declared unfit for sea duty in 1950 because of a nervous disorder. He was declared fit for sea duty in 1952. Appellant was authorized in 1952 to file an application for a new Third Mate's license but he has not taken any action to do this. Since 1947, Appellant's total time of employment on ships has been approximately one year.

#### BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends, generally, that he was persecuted by the Master and used as a scapegoat because of the Master's dislike for unions. Appellant claims that the two seamen, the Boatswain and Third Cook, whose depositions were placed in evidence did not tell the truth.

With respect to the individual specification, the only relevant matters gleaned from the numerous letters and notes submitted on appeal are as follows:

First Specification. Appellant had worked eight hours and was refused overtime pay. He had asked to be paid off because of a premonition of trouble.

Second Specification. Appellant brandished the knife in self-defense to discourage a mass attack by four armed seamen. Appellant's memory was hazy as a result of unknowingly having smoked a marijuana cigarette given to him by a native while ashore.

Third Specification. Appellant returned on board at 0935 after going ashore at 0800.

Fifth Specification. This was a frame-up. The door was not locked when Appellant went to sleep.

Sixth Specification. Appellant stopped work because he was suffering from abdominal pains. The Chief Mate permitted Appellant to go to a doctor.

### OPINION

Appellant has made numerous unsupported accusations against the Master and the two crew members whose testimony was corroborated by the log entries pertaining to Appellant. Although Appellant had full opportunity to appear at the hearing in order to cross-examine the two witnesses as well as to present evidence in his defense, he apparently chose not to do so.

There is substantial evidence in the record to support each of the five specifications found proved by the Examiner. In addition, Appellant admits, in his appeal, that the basic incidents referred to in the five specifications actually occurred but he sets up various defenses to protect himself. The hearing was the proper forum before which to present such defenses as evidence. They are not considered as evidence when presented in this manner on appeal.

The testimony of the Boatswain clearly supports the findings with respect to the First and Sixth Specifications. The testimony of the Third Cook is just as conclusive as to the findings concerning the Second and Fifth Specifications. Appellant admits, in part, the Third Specification and these allegations are specifically covered by a satisfactory log entry. Hence, I concur with the conclusion of the Examiner that the five specifications were proved.

I am also completely in accord with the view of the Examiner that the order of revocation was justified particularly on the bases of the burned mattress incident, the assault with a knife and Appellant's prior record of violence. In the interest of other seamen whose safety might be endangered by shipping with Appellant, the order will be sustained.

### ORDER

The order of the Examiner dated at Philadelphia, Pennsylvania,  
on 6 April 1956 is AFFIRMED.

A. C. Richmond  
Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington D. C., this 25th day of January, 1957.